



**MILPITAS CITY COUNCIL MEETING AGENDA
APRIL 18, 2006**

**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

(1) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING

(Pursuant to California Government Code Section 54957.6)

City Negotiators: Art Hartinger, Carmen Valdez

Employee Organization: International Association of Firefighters (IAFF)

Under Negotiation: Wages, Hours, Benefits, Working Conditions

(2) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to California Government Code Section 54956.9(a))

City of Milpitas v. Turner Construction et al., Santa Clara County Superior Court

Case No. 103CV815946 Consolidated with Case No. 103CV008400

(3) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to California Government Code Section 54956.9(a))

City of Milpitas v. City of San Jose, Case No. CV046013, Santa Clara County Superior Court

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Mayor Esteves)

VI. APPROVAL OF MINUTES (April 4, 2006)

VII. SCHEDULE OF MEETINGS

VIII. PRESENTATIONS

Proclamations:

“Arbor Day” - April 29, 2006

“National Volunteer Month” for the month of April, 2006

Commendation:

Eagle Scout Brian Pham

IX. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

X. ANNOUNCEMENTS

XI. ANNOUNCEMENT OF CONFLICT OF INTEREST

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with *Asterisks)

XIV. PUBLIC HEARINGS

- 1. Approve Major Tentative Map No. MA2004-3 and Zone Change No. ZC2004-1 for a five (5)-lot subdivision and rezone from Agriculture (A) to Single-Family Residential (R1-6), located at 2016 Calaveras Road (Staff Contact: Kim Duncan, 586-3283)**
- 2. Approve the Community Development Block Grant Funding for FY 2006-07 and Adopt the One-Year Action Plan (Staff Contact: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**
- 3. Consider Entertainment Event Permit for the Rotary Club to Sponsor a Carnival on May 11 - 14, 2006 (Staff Contact: Mary Lavelle, 586-3001)**

XV. UNFINISHED BUSINESS

- 4. Report on the Results of the Community Outreach Meeting Regarding City Program Priorities (Staff Contact: Emma Karlen, 586-3145)**
- * 5. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (March 21, 2006)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library and East Parking Garage, Projects No. 8162 and No. 8161 (Staff Contact: Mark Rogge, 586-3403)

RA6. Review Draft 2006-2011 Capital Improvement Program (CIP) Report (Staff Contact: Greg Armendariz, 586-3317)

RA7. Review and Consider the Proposed 2005-2010 Redevelopment Implementation Plan and Set a May 16, 2006 Public Hearing for Consideration of the Final 2005-2010 Implementation Plan (Staff Contact: Diana Whitecar, 586-3059)

***RA8. Adopt a Resolution Granting Initial Acceptance of the Community Center Sunshade Project No. 8102 (Staff Contact: Jorge Bermudez 586-3404)**

- *RA9. Adopt a Resolution Approving a Minor Addendum to the North Main Street Development Environmental Impact Report – Marylinn Drive Storm Drain Outfall (Staff Contact: Tom Williams, 586-3280 and Mark Rogge, 586-3403)**
- *RA10. Authorize Staff to Negotiate a Project Labor Agreement for the New Library Project No. 8162 (Staff Contact: Mark Rogge, 586-3403)**
- *RA11. Approve Lease Agreement With Cingular Wireless (Staff Contact: Bill Marion, 586-2701)**
- *RA12. Approve Contract Change Order: North Main Street Utilities Project, Weller Lane to Carlo Street Underground Utility District No. 5, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**
- *RA13. Reject Lowest Bid and Award Construction Contract to All Seasons Roofing for Pump Station Improvements, Project No. 8106 and Oak Creek Pump Station Improvements, Project No. 8140 (Staff Contact: Doug De Vries, 586-3313)**
- RA14. Agency Adjournment**

XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

- 6. Approve Mayor’s Recommendation for Donation to Tax Preparation Assistance Program (Contact: Mayor Esteves, 586-3029)**
- * 7. Approve Mayor Esteves’ Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)**
- 8. Consider Request From Chamber of Commerce To Hold Forum On Measure A at Milpitas City Hall (Contact: Councilmember Polanski, 586-3024))**
- * 9. Approve Change to One Section of Meeting Agendas (Contact: Councilmember Polanski, 586-3024)**

XVIII. NEW BUSINESS

- 10. Development System/Online Permitting Recommendations (Staff Contact: Bill Marion, 586-2701 and Keyvan Irannejad, 586-3244)**
- 11. Approve Agreement with MetroFi Inc. to Provide Wireless (“WiFi”) Service in Milpitas (Staff Contact: Bill Marion, 586-2701)**
- * 12. Request Authorization to Send Out Request For Proposals for Preparation of the State-Mandated General Planning Housing Element (Staff Contact: Felix Reliford, 586-3071)**
- * 13. Approve Rental Refund to Dem Nitifan for the Knights of Columbus “Citizens of the Year” Award Event (Staff Contact: Kathleen Yurchak, 586-3209)**

XIX. ORDINANCE

- 14. Waive First Reading Beyond the Title and Introduce Ordinance 48.17 Amending Title V, Chapter 200, Section 3.20 of the Milpitas Municipal Code - Solid Waste Management (Staff Contact: Darryl Wong, 586-3345)**

XX. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance: Kennedy Drive Sub-Division, Project No. 3159 (Staff Contact: Greg Armendariz 586-3317)**

XXI. BIDS AND CONTRACTS

- 16. **Award Construction Contract and Approve Budget Appropriation: South Park Victoria Drive Pavement Rehabilitation, Project No. 4225 (Staff Contact: Doug De Vries, 586-3313)**
- * 17. **Award the Contract for Waterline Alterations (Staff Contact: Chris Schroeder, 586-3161)**
- * 18. **Approve Purchase and Installation of Diesel Exhaust Extraction Systems (Staff Contact: Chris Schroeder, 586-3161)**
- * 19. **Authorize the City Manager to Execute a Consulting Services Agreement for Construction Material Testing Services with Consolidated Engineering Laboratories for Various Capital Improvement Program Projects (Staff Contact: Andrew Brozyna, (408) 586-3135)**
- * 20. **Authorize the City Manager to Approve Two Agreements with Santa Clara County Regarding Solid Waste Programs (Staff Contact: Darryl Wong, 586-3345)**
- * 21. **Authorize City Manager To Execute An Agreement With West Valley Sanitation District to Purchase 1 Million Gallons per Day Treatment Capacity, Approve Budget Appropriation - Capital Improvement Project No. 6104, and Authorize the Execution of the Third Amendment to the Wastewater Master Agreement with the Cities of San Jose and Santa Clara (Staff Contact: Darryl Wong 586-3345)**

XXII. CLAIMS AND DEMANDS (NONE)

XXIII. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
E-mail: rpioroda@ci.milpitas.ca.gov / Fax: 408-586-3030 / Phone: 408-586-3040
A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings on the following Commissions:
Arts Commission, Planning Commission (alternate)
Mobile Home Park Rental Review Board (alternate)
Applications are available online at www.ci.milpitas.ca.gov or outside the City Council Chambers.
Contact the City Clerk's Office (586-3003) for more information.

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 2, 2006, AT 7:00 P.M.**

BUDGET MEETING, MAY 9, 2006 AT 6:00 P.M.

AGENDA REPORTS

XIV. PUBLIC HEARINGS

- 1. Approve Major Tentative Map No. MA2004-3 and Zone Change No. ZC2004-1 for a five (5)-lot subdivision and rezone from Agriculture (A) to Single-Family Residential (R1-6), located at 2016 Calaveras Road (Staff Contact: Kim Duncan, 586-3283)**

Background: On February 22, 2006, the Planning Commission recommended approval to the City Council for a five (5)-lot subdivision and change of zoning from Agricultural (A) to Single-Family Residential (R1-6) for an approximately .735-acre (.95 gross acre) parcel for the purpose of creating new single-family lots. As a part of the application, the Planning Commission adopted the associated Initial Study and Mitigated Negative Declaration (EA2005-8) and approved the removal of eight (8) ordinance-sized protected trees.

The applicant is proposing to subdivide an existing .735-acre (.95 gross acre) parcel to five (5) individual lots ranging in size from 6,023 square feet to 6,740 square feet and rezone the parcels from Agricultural (A) to Single-Family Residential (R1-6). The proposed parcels would have minimum lot widths exceeding 60 feet and an average slope of 5%. The three (3) existing single-family residences will be demolished and, ultimately, five (5) new two-story single-family residences constructed on the project site.

Access: Primary access to the project site is currently provided by three driveways located off Calaveras Road. The applicant is proposing to remove the existing driveways and construct five new driveways to provide access to the new parcels. In order to provide future residential property owners safe ingress and egress off Calaveras Road, hammerhead driveways on each parcel would allow drivers to navigate vehicles to exit parcels by vehicle front end.

No-Build Zone: The project site is located adjacent to the Arroyo de Los Coches channel, which is part of a Santa Clara Valley Water District flood control drainage easement. The creek bed and slopes are reinforced with rock slope (gabion) protection. The proposed rear yards of the five (5) parcels would have an average depth of 32 feet and consist of a 15-foot setback, as measured from the building footprint, with the remainder (minimum 10 feet) consisting of the Los Coches creek top-of-bank and slopes. To ensure creek slope stability, the 15-foot rear setback from the building footprint would be designated as a “no build zone” for structures, such as pools and accessory buildings, near the creek top-of-bank.

SCVWD Easement: The project site is bound to the south by a SCVWD Flood Control/Drainage Easement, however an approximately 156 square foot rectangular shaped portion of property (at the rear property line of Lot 1 extending behind the parcel located at 2004 Calaveras Road) was not dedicated to SCVWD for flood drainage purposes. This 156-square foot portion of property will be dedicated to the SCVWD as flood control easement to create consistency with the existing flood control/drainage easement.

Protected Trees: Since Planning Commission approval, the applicant has continued to work with staff and, as shown on the modified Tentative Map, is proposing to retain or relocate five (5) protected olive trees (Nos. 2, 3, 4, 5, and 7) on site. As such, the conditions of approval have been modified to reflect this change.

Other Improvements: As required by the City’s Subdivision Ordinance, the applicant will install necessary public improvements along Calaveras Road, including curb, gutter, pavement, sidewalks, striping, streetlights, and underground existing services, as well as pay the required park-in-lieu fee.

Recommendation: Close the public hearing. Approve the Major Parcel Map No. MI2004-3 and Zone Change No. ZC2004-1 subject to the attached Findings and Special Conditions.

2. **Approve the Community Development Block Grant Funding for FY 2006-07 and Adopt the One-Year Action Plan (Staff Contact: Felix Reliford, 586-3071, and Gloria Anaya, 586-3075)**

Background: The purpose of this public hearing is to establish funding levels and uses of the Community Development Block Grant (CDBG) Program for fiscal year 2006-07 and to adopt the One-year Action Plan. The Action Plan describes the eligible programs, projects and activities to be undertaken with CDBG funds in the next fiscal year. An application workbook was previously distributed to the Council February 15, 2006, and contains a memorandum discussing the general guidelines regarding the use of CDBG funds and a copy of each eligible application received.

CDBG Program

The City's estimated CDBG allocation for FY 2006-07 is approximately \$600,963. Twenty-two (22) applications were received for CDBG funding. One application was not eligible per the CDBG Program requirements. There are 17 applications requesting funding for Public Services and a total of \$92,005 is available to fund this category. A total of four applications requested \$413,332 in Non-Public Services funds. The Council should be advised that due to Department of Housing and Urban Development budget cuts, City of Milpitas grant is \$69,889 less than last year.

On October 4, 2005, the City Council adopted the two-year (2006-2008) CDBG funding priorities as guidelines to assist the Community Advisory Commission (CAC) in evaluating the grant applications. Specifically, the Council adopted two major CDBG funding policies at their meeting:

- 25% of all Public Service funds must be spent on City Programs. Based on the CDBG Program allocation for public services (\$92,005), 25% of these funds are \$23,000.
- Increased the allocation from \$15,000 to \$25,000 for Fair Housing Services, with the additional \$10,000 coming from Redevelopment Agency 20% Housing Set-Aside Funds.

At its meeting on March 1, 2006, the Community Advisory Committee held a public hearing and reviewed the CDBG applications. The CAC has recommended \$600,983 in total funding, including \$92,005 (\$15,000 from CDBG General Program Administration funds for Project Sentinel's Fair Housing Activities) for Public Services and \$413,332 for Non-Public Services. The remaining \$120,192 of the grant is committed for program administration.

At the CAC meeting, the majority of the commissioners (8 out of 9 members) recommended \$150,000 (non-public service funds) each for Terrace Gardens re-roofing and the Senior Housing Solutions project. Because one commissioner recommended \$200,000 for the Terrace Gardens project, the total overall average funding for the Senior Housing project was reduced (\$144,444). Because the Senior Housing Solutions project financing is based on commitments and the leveraging of funds (as required by most non-profit organizations) from other outside sources and agencies contributing to the project, staff recommends that the Council restore the funding request to \$150,000.

Included in the Council's agenda packets is the March 1, 2006 CAC minutes and background information, including their funding recommendations. Also included in the agenda packet is a letter from Support Network for Battered Women. All applicants have been notified of the City Council public hearing and have been advised to be present to answer any questions the Council might have.

Action Plan

The City of Milpitas One-Year Action Plan describes the eligible programs, projects and activities to be undertaken with the funds expected to be available during the 2006-07 program year and their relationship to the priority housing, homeless, and community development needs.

The Action Plan is an addition to the required Five-year Consolidated Plan and previously approved by the Department of Housing and Urban Development (HUD) for continued funding as an entitlement city.

In summary, the Action Plan identifies the Federal, State and local resources that will be used to fund local programs and services, the strategic plan for implementation and the citizen participation process. As required by HUD, the Action Plan has been advertised for public view and comments for 30 days (March 6 through April 6, 2006).

Copies of the Action Plan were sent to 22 CDBG applicants. Copies were also placed at City Hall and the public library. Public comments received have been incorporated in the Action Plan and will be forwarded to HUD by May 15, 2006. A draft of the One-Year Action Plan is included in the Council's agenda packet.

Recommendation:

1. Close the public hearing on the CDBG funding process and the Action Plan.
2. Approve the CAC recommendations for FY 2006-07 CDBG funding, including funding \$150,000 each for Terrace Gardens and Senior Housing Solutions Projects.
3. Adopt the One-Year Action Plan.

3. Consider Entertainment Event Permit for the Rotary Club to Sponsor a Carnival on May 11 - 14, 2006 (Staff Contact: Mary Lavelle, 586-3001)

Background: The Milpitas Rotary Club submitted an application in February for an Entertainment Event Permit to hold a carnival at the Mervyn's store parking lot, in the Town Center, for the dates of Thursday, May 11 through Sunday, May 14, 2006. Rotary Club has contracted with hire Butler Amusements Inc., a company based in Fairfield, California, that has operated carnivals throughout the west, and recently, was the operator of a carnival at the Great Mall in March. Proposed hours of operation for the carnival are: From 3:00 PM – 11:00 PM Thursday - Friday, and from 11: 00 AM to 11:00 PM on Saturday and Sunday. The applicant requests a waiver of fees for the cost of a Fire Marshall.

However, as of the publication of this agenda report, the Rotary Club has withdrawn its request to hold the carnival at Town Center (due to ongoing construction and parking challenges). It is pursuing a different location, potentially at the Milpitas Wal-Mart parking lot. Staff and Rotary Club members will update Council with the latest information prior to or at the Public Hearing.

The public hearing was advertised, as required by Milpitas Municipal Code, in the Milpitas Post on April 6.

Recommendation: Discuss the application and determine whether the specified new location is appropriate. Based on the most current input from Building, Planning, Police, Fire Marshall and Engineering, move to approve an entertainment event permit for the Rotary Club to operate a carnival in Milpitas for the dates of May 11 – 14, 2006.

XV. UNFINISHED BUSINESS

4. Report on the Results of the Community Outreach Meeting Regarding City Program Priorities (Staff Contact: Emma Karlen, 586-3145)

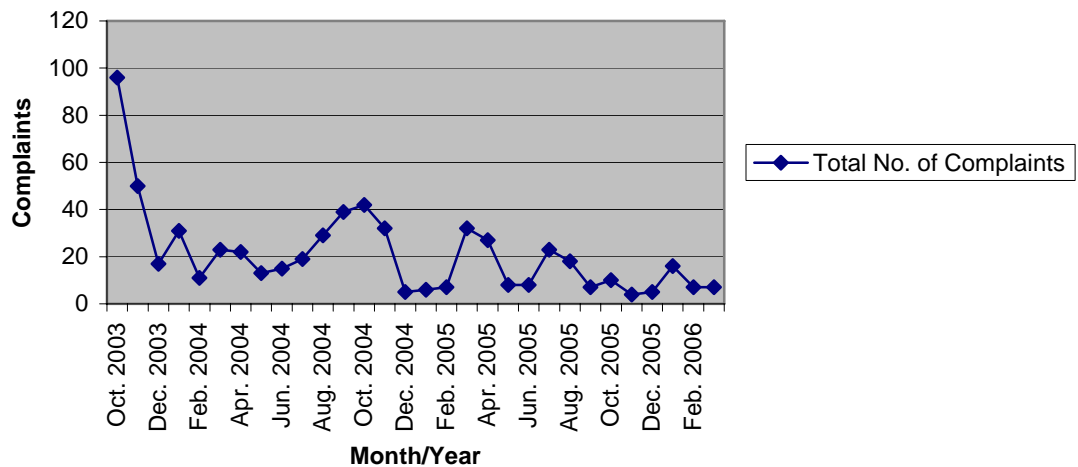
Background: Staff will provide a report on the results of the Community Outreach meeting held at four Milpitas schools on April 10, 2006 regarding City program priorities.

Recommendation: Receive staff report and provide direction.

*** 5. Odor Control Comprehensive Action Plan Update (Staff Contact: Darryl Wong, 586-3345)**

Background: The following is a quarterly progress report on the Odor Control Comprehensive Action Plan. The Bay Area Air Quality Management District (BAAQMD) Rapid Notification system continues to e-mail real-time odor complaint advisories to potential odor sources and City staff. Complaints, consisting primarily of odors from a combination of neighborhood sources (cooking, restaurant smells) and compost, have remained low as shown in the graph below.

October 2003 - March 31, 2006 Odor Complaint Summary



Recommendation: Note receipt of the progress report.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (March 21, 2006)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library and East Parking Garage, Projects No. 8162 and No. 8161 (Staff Contact: Mark Rogge, 586-3403)

Background: The Library Subcommittee met on March 28 and heard a progress report on the Library and Parking Garage. The Library architect, Group 4 Architecture, has completed the 60% construction documents phase of design. The Parking Garage architect, Chong Partners, has completed the 95% construction documents phase of design. Preliminary site preparation work is also in progress. Staff will provide a brief presentation on the progress of these projects.

Recommendation: Note receipt of the progress report on the design of the Library and Midtown East Parking Garage.

RA6. Review Draft 2006-2011 Capital Improvement Program (CIP) Report (Staff Contact: Greg Armendariz, 586-3317)

Background: The Draft 2006-2011 Capital Improvement Program (CIP) Annual Report has been prepared by staff and was distributed to Council on April 07, 2006. The projects are arranged into six main categories: Community Improvements, Parks, Streets, Water, Sewer, and

Storm Drain. The document includes a summary by these categories, and individual proposed project descriptions. Previously funded projects are also summarized in a separate section.

Only funding in the first year (2006-07) of the five-year CIP will be appropriated in the upcoming budget. The total cost of these appropriations is \$55 million including \$33.7 million for the Library project. The appropriations listed in subsequent years are shown for planning purposes and do not receive expenditure authority until approved by Council at a later time. Planned appropriations for projects in the five-year CIP over the next five years total \$99 million.

The Parks and Recreation projects were reviewed and approved by PRCRC on March 6, 2006. The Draft CIP Annual Report will also be presented to the Planning Commission on April 12, 2006, for a recommendation to find the document in conformance with the General Plan.

A staff presentation of the Draft CIP highlights will be provided at the Council meeting. Based upon Council direction, the Proposed CIP will be prepared. The Proposed CIP will then be presented to Council for approval at the budget session on May 9, 2006. Once the Proposed CIP is approved, the budget appropriations scheduled therein for Fiscal Year 2006-07 will take effect July 1, 2006. The Final CIP will be submitted to Council in September after the Finance department has closed out Fiscal Year 2005-2006.

Recommendation: Review and provide staff with direction and comments on the Draft 2006-2011 Capital Improvement Program.

RA7. Review and Consider the Proposed 2005-2010 Redevelopment Implementation Plan and Set a May 16, 2006 Public Hearing for Consideration of the Final 2005-2010 Implementation Plan (Staff Contact: Diana Whitecar, 586-3059)

Background: California Community Redevelopment Law (CRL) requires redevelopment agencies to adopt an Implementation Plan every five years. The purpose of the Implementation Plan is to set goals and objectives that will guide efforts to eliminate blight over the next five years and estimate the revenues and expenditures anticipated by the Agency in the five year period. The Plan contains an affordable housing section to help the Redevelopment Agency monitor progress in meeting the community's affordable housing needs. The Implementation Plan also provides an overview of accomplishments of the previous five-year period.

Staff made an initial presentation on the proposed Implementation Plan (Exhibit A) at the March 7th meeting. At that time, Council requested additional time for review, asking that the item be heard again on April 18th.

The Milpitas Redevelopment Agency adopted its first Five Year Implementation Plan in 1994 when CRL was amended to require Implementation Plans. A new Five Year Implementation Plan was approved in 2000 and it is now time to adopt the third Milpitas Redevelopment Agency Five Year Implementation Plan. In addition to adopting the Five Year Plan, CRL requires that a mid-cycle public hearing be held in order to better evaluate the success of the local redevelopment program.

Based on the assumptions of 6% growth for FY 2006-07, 5% growth for FY 2007-08 and 4% growth for the following years, it is anticipated over the next five years that the Agency will receive a total of \$152 million in property tax revenues, known as tax increments. Of that, 20% or \$30 million will be set aside for Low and Moderate Housing. The remaining tax increment funds of \$122 million, combined with interest income over the five years, provides the Agency nearly \$130 million for is 80% programs and operations. Table B in the proposed Implementation Plan illustrates the revenue and expenditure projections in more detail.

While this tax increment growth is positive, projected annual expenditures for operations, bond debt payments and legislated pass-throughs to other taxing entities and funding the approved 2005-2010 Capital Improvement Program requires the Agency utilize all of the existing its

existing fund balance and bond proceeds. Based on these projections, at the end of the five year period, the 80% fund will have used its reserves and have a \$1.0 million shortfall.

The 20% Housing Set Aside Program will likely end the five-year period with approximately \$18 million in its fund balance. However, it is incumbent upon staff to recommend use of these funds, as accumulation of Housing Set Aside funds is inconsistent with the goals of CRL.

Over the last five years, well over half of the 80% redevelopment funds have been used to upgrade the City's storm drain, sewer and water systems, improve local streets and traffic signals as well as substantially contributing to the construction of critical freeway improvements. The remaining redevelopment funds were used to make substantial and critical community and parks improvements. Staff will give a brief overview of these accomplishments at the meeting.

Recommendation: Provide direction to staff in the preparation of the final 2005-2010 Redevelopment Implementation Plan and schedule a May 16, 2006 public hearing for the Plan.

***RA8. Adopt a Resolution Granting Initial Acceptance of the Community Center Sunshade Project No. 8102 (Staff Contact: Jorge Bermudez 586-3404)**

Background: This project provided a new sunshade structure at the Milpitas Community Center lot. The City Council awarded the project to Shade America on August 2, 2005. The Contractor has completed the project work, and final inspection was performed and the work approved in March 2006. Therefore, an initial acceptance may be granted and the contractor's faithful performance bond may be reduced to \$4,107.50, which is 10% of the contract amount.

Recommendation: Adopt a Resolution granting initial acceptance of the project No. 8102, subject to the one-year warranty period and reduction of the faithful performance bond to \$4,107.50.

***RA9. Adopt a Resolution Approving a Minor Addendum to the North Main Street Development Environmental Impact Report – Marylinn Drive Storm Drain Outfall (Staff Contacts: Tom Williams, 586-3280, and Mark Rogge, 586-3403)**

Background: The North Main Street Development Environmental Impact Report (EIR) was approved by the City Council on January 4, 2005 (Resolution No. 7497) in compliance with the requirements of the California Environmental Quality Act. (CEQA). It describes and considers possible impacts and associated mitigation measures for several projects including the new library, parking garages, Senior housing, health center, utilities, streetscape and associated work.

During design of the North Main Street utilities it became clear that the new storm drainage main line should be extended all the way to the channel to better serve storm drainage in the area, and to repair the existing Marylinn Drive storm drain outfall. Although the current EIR already generally covers storm drainage work, the addendum is recommended as a prudent means to specifically include this portion of the work.

The City's environmental consultant, David J. Powers & Associates, Inc., prepared the EIR addenda. The City Council/Milpitas Redevelopment Agency as the local agency has the authority to adopt the EIR addendum. The addendum will be recorded with the County Clerk-Recorder.

Recommendation: Adopt a Resolution to approve a minor addendum to the North Main Street EIR – Marylinn Drive Storm Drain Outfall; and direct staff to record the addendum with the County Clerk-Recorder.

***RA10. Authorize Staff to Negotiate a Project Labor Agreement for the New Library, Project No. 8162 (Staff Contact: Mark Rogge, 586-3403)**

Background: At the December 6, 2005 City Council meeting, the Council expressed concern with potential labor disputes which could arise during construction of the new Milpitas Library. A Project Labor Agreement (PLA) has been used by government agencies to prevent work stoppages and other delays due to labor related issues. A PLA is an agreement negotiated between the City, the Building Trades Council, and labor organizations of the anticipated construction work, prior to award of the construction contract. The PLA is designed to eliminate potential project delays from strikes, ensure a steady supply of skilled labor, and provide a means of resolving worker grievances while the labor work force remains engaged with the City's projects.

One goal of the PLA would be to bind the labor unions not to strike while the library is under construction. The City would in turn agree to require all contractors and their subcontractors who submit bids on these City's projects to accept the terms of the PLA. There is a risk that the use of a PLA has the potential to reduce the number of project bidders, which in turn could mean higher bid prices. However, higher bid prices would be known costs at bid opening and may be smaller than potential labor strikes and other delay costs that could happen without the use of the PLA.

Staff heard from and met with three groups who oppose PLAs. A discussion about PLAs was conducted at the March 28 Library Subcommittee meeting. The discussion included an introduction by staff and five-minute statements from those wishing to speak either in favor of or in opposition to a PLA, followed by three-minute rebuttals. The Subcommittee members then asked the parties a few questions. Minutes of the Library Subcommittee meeting are included in the Council packet.

Several labor agreements for trades that could affect the library construction will expire during the construction of the library:

- 2007 Tile Layer, Ironworkers, and Elevator Constructors
- 2008 Carpenters, Millmen, Pile Drivers, Drywall Lathers & Tapers

Possible City goals to be included in a PLA are:

- Timely and successful completion of the project;
- No work stoppages, strikes, sympathy strikes, lockouts;
- Establish an effective method to settle disputes and controversies
- Define specialized work that may be excluded from the PLA;
- City's sole right to determine lowest responsible bidder, no limitation or restriction on use of equipment, material products, tools, etc.

Specialized work that may be excluded from the PLA:

- Security systems: access control, book theft/security/fire alarms
- Furnishings: Library bookcases, display cases, carrels, movable units, book drop and conveyor systems, signage/graphics
- Low-voltage (computers, telecom) wiring: computer data networking, cabling, fiber-optic, servers, wireless access, public address system, telephone
- Audio-visual systems, projectors
- County or City furnished items (appliances, lockers)
- Artwork lighting and installation
- Maintenance of leased equipment and related on-site supervision

It is recommended that the Council authorize staff to negotiate and draft a Project Labor Agreement for the new Library. The Project Labor Agreement would be subject to City Attorney review and City Council approval at a later meeting.

Recommendation: Authorize Staff to Negotiate a Project Labor Agreement for the construction of the library, Project No. 8162.

***RA11. Approve Lease Agreement With Cingular Wireless (Staff Contact: Bill Marion, 586-2701)**

Background: Cingular Wireless wishes to lease space at Fire Station One for the installation of a cellular communications site. City staff has been working with Cingular for several months and believes they have a design that meets the applicable Planning requirements. This lease is contingent upon Cingular securing all necessary approvals and they will be required to complete the normal Planning and Permitting process. The lease will be for an initial period of five years with options for extension. The base rent will be \$14,400 annually, which will be subject to a 7.5% adjustment at the beginning of each extension of the lease. These terms are comparable to those found in a survey of other jurisdictions.

Recommendation: Authorize the City Manager as Executive Director of the Redevelopment Agency to execute a lease agreement with Cingular Wireless, subject to approval as to form by the City Attorney.

***RA12. Approve Contract Change Order: North Main Street Utilities Project, Weller Lane to Carlo Street Underground Utility District No. 5, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

Background: This project was awarded for construction by the City Council on February 7, 2006, to D'arcy & Harty Construction, Inc. The project provides installation of new underground utilities in North Main Street, Weller Lane, Marylinn Drive, Carlo Street, and Winsor Avenue for the new library, parking garage, and other Midtown developments including the senior housing, County health center and parking garage projects. Work started March 1st, and it is anticipated that work will continue into July 2006.

The design for the Midtown East parking garage is in the 95% construction document phase. The garage design includes a water lateral for landscape irrigation and two drain oil/water interceptors, which are required to separate and remove oils from water, prior to discharge to the storm drain or sanitary sewer. Staff recommends the approval of a contract change order to D'arcy & Harty Construction to allow for the installation of the irrigation lateral and the storm drain oil/water interceptor's and related piping as part of the utilities work, now that the size has been determined. This takes advantage of economy of scale since the utility contractor is already installing related utilities around the library and garage project sites. The cost to install these facilities is not to exceed \$95,000, which is considered reasonable for the work and is within the Architect's estimate for this work. There are sufficient funds in the North Main Street utilities project for this purpose.

Recommendation: Authorize staff to approve a contract change order, in the amount not to exceed \$95,000 to D'arcy & Harty Construction Inc.

***RA13. Reject Lowest Bid and Award Construction Contract to All Seasons Roofing for Pump Station Improvements, Project No. 8106 and Oak Creek Pump Station Improvements, Project No. 8140 (Staff Contact: Doug De Vries, 586-3313)**

Background: Plans and specifications for the subject project were completed in accordance with the approved five-year Capital Improvement Program (CIP). The project will re-roof Oak Creek, Penitencia, and Bellew storm water pump stations. This project will include new roofing, skylights, flashings, and minor repairs to the roof structure at the three stations.

The project was advertised and sealed bid proposals were opened on Thursday, March 16, 2006. The Engineer's estimate was \$135,000. The bid proposals ranged from \$78,281 to \$134,745, and the lowest responsive and responsible bidder was determined to be Western Roofing. However, the low bidder has requested to be relieved of the bid pursuant to Public Contract Code Sec. 5103 due to a mathematical error, which caused a mistake in their bid. The City Attorney has reviewed the request and concurs with staff's recommendation to reject the lowest bid and award the contract to the second responsive and responsible low bidder, All Seasons Roofing, Inc. in the amount of \$94,361. Sufficient funds are available in the project budget to award this contract.

Recommendation: Award Construction Contract to All Seasons Roofing, in the amount of \$94,361.

RA14. Agency Adjournment

XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

6. Approve Mayor's Recommendation for Donation to Tax Preparation Assistance Program (Contact: Mayor Esteves, 586-3029)

Background: Mayor Esteves received a request for a donation of \$249.00 to the program, which provides income tax preparation assistance at the library for seniors, disabled, and low-income residents. If approved, funding would be allocated from the City Council's unallocated Community Promotions section of the budget.

Recommendation: Approve the Mayor's recommendation of a donation in the amount \$249.00 to the Volunteer Income Tax Assistance program at the Milpitas Library, with the funds from the City Council's Community Promotions budget.

*** 7. Approve Mayor Esteves' Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following Milpitas residents be appointed to Commissions as noted below:

Sister City Commission:

Appoint current Alternate #1 Massoud Arefi to a vacant seat that expires in September 2006.

Appoint current Alternate #2 Beverly McCarter as Alternate #1, to a term that expires in September 2006.

Appoint Oliver Wan (currently CAC Alternate #3) as Alternate #2, to a two-year term that expires in September 2007.

Senior Advisory Commission:

Appoint Bernice Wrinkle as Alternate #2, to a term that expires in December 2006.

Recommendation: Move to approve the Mayor's recommended Commission appointments.

8. Consider Request From Chamber Of Commerce To Hold Forum On Measure A at Milpitas City Hall (Contact: Councilmember Polanski, 586-3024)

Background: On March 23, the Milpitas Chamber of Commerce sent a written request to the Mayor and Council requesting the use of the Council Chambers on May 18, in order to host an educational meeting for the public regarding the Santa Clara County Measure A on the June 6 ballot (measure regarding a tax for transportation funding). The Chamber also invited the City to serve as a "co-sponsor" including the request to broadcast the meeting and waive any fees.

According to the adopted "City Hall Building Plaza and Grounds Fees" schedule, the Chamber may use the City's Council Chambers (and other City meeting rooms) for no fee. There is, however, a fee for Information Services staff to be available at the meeting and for cable television broadcast service.

Recommendation: Discuss request from the Chamber and determine level of City participation, if any. Move to approve request of the Chamber of Commerce.

- * 9. **Approve Change to One Section of Meeting Agendas (Contact: Councilmember Polanski, 586-3024)**

Background: Councilmember Polanski requests the City Council make a permanent change to the section on regular City Council and other Commission meeting agendas, where members of the public make remarks at meetings. On the Council agenda, "Citizens Forum" has been listed for many years in Milpitas. Ms. Polanski requests that it be changed to "Public Forum" in order to indicate this as an opportunity for comment from any member of the public or audience, not solely for citizens of the City of Milpitas.

Recommendation: Approve permanent change on all City meeting agendas to note "Public Forum" for the time when people may comment at public meetings.

XVIII. NEW BUSINESS

- 10. **Development System/Online Permitting Recommendations (Staff Contacts: Bill Marion, 586-2701 and Keyvan Irannejad, 586-3244)**

Background: Last year, staff presented a proposal to move forward with an Online Permitting/Development System project. The focus of this project was two-fold, to provide an online permitting capability and to support the process improvement initiatives. This process began with a review of permitting systems in use with other jurisdictions followed by a requirements definition involving the Building, Planning, Engineering, Fire Prevention and Finance Departments. Based on this effort a Request for Proposal (RFP) was drafted and released on October 10th, 2005. A major concern is the projected increase in permitting activity. Based on planned or in progress developments, Building staff estimates that over the next two years, they will issue in excess of 60,000 permits. This is equivalent to all permits issued from 1988 through 2001. Staff reviewed the proposals and selected a system that best met the City's requirements.

A fixed 5-year cost for the system was calculated along with projected permitting and development fees for the same period in order to determine the required cost recovery over the life of the system. This resulted in a 3.1% permitting automation fee. The recovery period could be extended to six years with a 2.7% fee or seven years with a 2.5% fee. It is suggested that the Capital Contingency Reserve be used to fund the initial purchase and installation of the system. The automation fee would then replenish the Capital Contingency Reserve over time.

The proposed system will provide a higher level of service to citizens, developers and builders justifying the automation fee. Information will be more readily and quickly available, reducing applicant turn-around time. With the efficiencies gained, it is expected that existing staffing levels would be sufficient to handle the projected increase in workload. Staff will make a brief presentation and be available for questions.

Recommendation:

1. Direct staff to return with the implementing language for a permitting automation fee effective July 1st, 2006 in an amount of 3.1%, 2.7% or 2.5%
2. Approve the creation of a Capitol Improvement Project (C.I.P.) to implement an Online Permitting/Development System and approve the transfer of \$500,000 from the Capital Contingency Reserve for project funding.
3. Award bid to CRW Associates for an automated development system.

- 11. **Approve Agreement with MetroFi Inc., to Provide Wireless ("WiFi") Service in Milpitas (Staff Contact: Bill Marion, 586-2701)**

Background: The City has been approached with a second proposal to offer WiFi service within Milpitas. MetroFi Inc., of Mountain View, has applied to mount equipment on light poles and traffic signal poles within the public right of way in order to provide wireless Internet service throughout the residential and commercial areas of the City. MetroFi currently operates in the cities of Santa Clara, Cupertino, Sunnyvale, Mountain View and three public plazas in San Francisco.

MetroFi will offer a free advertising supported service to consumers. Additionally, a paid service without advertisements is available at a rate estimated to be in the range of \$20 per month. In exchange for the use of City facilities, MetroFi will pay a lease amount estimated at between \$10,000 to \$14,000 per year.

No investment is required by the City and this offering compliments the recently approved agreement with EarthLink. Milpitas residents will be able to choose between various WiFi options that range from a free ad supported service to a paid fully featured service. This proposal was presented to the Telecommunications Commission and the Economic Development Commission, both of which supported this proposal and the concept of multiple service providers. Staff will make a brief presentation on the MetroFi proposal and MetroFi representatives will be available to answer questions.

Recommendation: Authorize the City Manager to execute an agreement with MetroFi Inc., to provide wireless service and for the use of the public right-of-way, subject to approval as to form by the City Attorney.

*** 12. Request Authorization to Send Out Request For Proposals for Preparation of the State-Mandated General Planning Housing Element (Staff Contact: Felix Reliford, 586-3071)**

Background: Pursuant to California Government Code 65580-65589, each city and county are required to prepare and implement a General Plan Housing Element every five years. The Housing Element, as required by law, contains the following major subject areas:

- The evaluation of local housing needs and an analysis of constraints affecting the ability of the marketplace to meet these needs;
- The identification of community housing goals, objectives and policies.
- An evaluation of the community's performance in achieving the goals established for the past five-year period.
- The description of a new five-year housing program to meet the identified housing needs and goals as prescribed by the State of California Housing and Community Development (HCD).

Milpitas' previous Housing Element was adopted by the City Council in October 2002 and was found by HCD to be in conformance with the State Housing Element Law. To assist the City in preparing the current housing element, staff has prepared and upon approval by the City Council, will send out the Request for Proposal (RFP) to various planning consultant firms that specialize in the preparation of housing elements. The Housing Element is required to be submitted to HCD by December 31, 2007.

Also, as previously discussed by the Council, staff is recommending that a Housing Marketing Study be prepared as part of the Housing Element. The housing market study will assist the City Council and staff on: 1) housing market conditions, 2) land use analysis, 3) supply and demand of housing types, 4) characteristics of the Milpitas housing market, and 5) the need for executive level homes within the City.

It is estimated that the Housing Market Study to address these issues will cost an additional \$35,000 to \$50,000 to the existing General Plan Housing Budget. The current General Plan Housing Element budget is \$120,000. If the Council decides to include the Housing Marketing

Study, the budget will increase to \$155,000-\$170,000. Once the consultant has been selected, staff return to the City Council with approval to execute the contract agreement. At that time, the exact dollar amount for the Housing Marketing Study (in the consultant's budget) will be included.

Included in the Council's agenda packet is the Request for Proposal, including the Housing Market Study for consideration by the City Council.

Recommendation: Authorize Staff to issue the Request for Proposal for preparation of the State Mandated General Plan Housing Element, including the Housing Marketing Study.

* **13. Approve Rental Refund to Mr. Dem Nitifan for the Knights of Columbus "Citizens of the Year" Award Event (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: Mr. Dem Nitifan of the Knights of Columbus submitted a letter to staff on March 23, 2006, requesting a fee waiver for \$342 for the rental fees of the Milpitas Community Center Auditorium on March 25, 2006, for the "Citizens of the Year" Awards event.

Per the City of Milpitas Facility Rules and Regulations, written fee waiver requests must be submitted to City Council at least 90 days prior to the proposed rental date. Due to the nature of the event, it is recommended that the City Council approve the rental refund of \$342 to Mr. Nitifan, with the understanding that all future fee waiver requests meet the 90 day requirement.

Recommendation: Refund Mr. Dem Nitifan \$342 for the rental of the Community Center Auditorium on March 25, 2006.

XIX. ORDINANCES

14. Waive First Reading Beyond the Title and Introduce Ordinance 48.17 Amending Title V, Chapter 200, Section 3.20 of the Milpitas Municipal Code - Solid Waste Management (Staff Contact: Darryl Wong, 586-3345)

Background: The Milpitas Municipal Code (Code) specifies that the owner of a premise shall subscribe to and pay for City utilities, including solid waste and water services. The Code allows the City to discontinue water service for the nonpayment of any solid waste collection charges. Discontinuance of water service for nonpayment has been a very effective mechanism to assure proper and timely utility service payment.

The City has some single-family accounts where a common water meter serves several residents. For these cases, water bills are paid by an agent that represents the residents (such as a Home Owners Association), while solid waste bills may be paid by the individual residents. The City has not discontinued water service for delinquent solid waste payments from these accounts, since such stop service would penalize not only the delinquent resident but also residents who have properly paid their bill. We have also found instances whereby new residents on common water accounts use solid waste services, but are not billed for the service since no move-in notification was provided to the City (this occurs since the resident does not have to start a water service account).

This proposal is to revise Chapter 200, Title V, on Solid Waste Management, to require all residents with common water meters to have the same agent who pays the water bill also pay the solid waste bill. This change, which would apply only to new accounts, would help insure proper solid waste payment from new residents on common water meters, and permit the City to stop water service to an account due to water and/or solid waste nonpayment.

A copy of the proposed ordinance is included in the Council's packet. Staff recommends the introduction of the ordinance.

Recommendation:

1. Waive the first reading beyond the title.
2. Introduce Ordinance 48.17 amending Chapter 200 of Title V Section 3.20 of the Milpitas Municipal Code regarding solid waste management.

XX. RESOLUTIONS

- * 15. **Adopt a Resolution Granting Initial Acceptance: Kennedy Drive Sub-Division, Project No. 3159 (Staff Contact: Greg Armendariz 586-3317)**

Background: The public improvements consisting of constructing a new cul-de-sac, curb, gutter and sidewalk, sewer, water and monuments and streetlights have been completed by the developer. This work is, therefore, now ready for initial acceptance in accordance with the improvement agreement. The developer faithful performance bond may be reduced to \$40,000, which is 10% of the contract amount.

Recommendation: Adopt a Resolution granting initial acceptance of Project No. 3159, subject to a one-year warranty period and reduction of the faithful performance bond to \$40,000.

XXI. BIDS AND CONTRACTS

16. **Award Construction Contract and Approve Budget Appropriation: South Park Victoria Drive Pavement Rehabilitation, Project No. 4225 (Staff Contact: Doug De Vries, 586-3313)**

Background: On February 21, 2006, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project provides new asphalt pavement for South Park Victoria Drive (between Calaveras Boulevard and Yosemite Drive) and on Calaveras Boulevard (between Park Victoria Drive and I-680 on/off ramps east.) The work will include rubberized asphalt concrete overlay, localized full depth asphalt concrete repairs, cold planning, replacement of traffic detector loops, and installation of ADA compliant sidewalk ramps, and the Engineer's Estimate was \$1,300,000. Staff is happy to report that the City has obtained grant funding of approximately \$1.2 million from Federal Surface Transportation Program (STP) Funds for this project. This grant requires local matching fund to be at least 11.47 percent of project cost.

Once the project is awarded, the contract must be fully executed by May 1, 2006. This is necessary to avoid the requirement by the State of California to re-advertise and re-bid the project in the event the State changes their Disadvantage Business Enterprise (DBE) program from race conscious to race neutral. A decision to this effect is expected from the State on May 1, 2006.

The project was advertised and sealed bid proposals will be opened on April 14, 2006. Since the bid due date is beyond the agenda production date, and in order to expedite the contract, a verbal staff report will be provided at the City Council meeting. The report will include a summary of the bid results and a recommendation to award to the lowest responsive bidder.

A budget appropriation of \$455,892 from STP Grant Funds and \$744,108 in Street Funds will be needed in order to award this contract.

Recommendation:

1. Approve a budget appropriation in the amount recommended by staff.
2. Award the construction contract for the South Park Victoria Drive Pavement Rehabilitation, Project No. 4225 to the lowest responsive bidder.

- * 17. **Award the Contract for Waterline Alterations (Staff Contact: Chris Schroeder, 586-3161)**

Background: On March 13, 2006, staff went out for bids to lower a water line at the Sunny Hills turn out station at Washington Dr. and Escuela Parkway. Bids were advertised in the Milpitas

Post, mailed to 12 vendors on the City's vendor data base, and posted on the city's website. Four vendors responded and are summarized below.

San Jose Water Co.	\$27,289.00
Casey Construction Co., Inc.	\$28,980.00
Talus Construction, Inc.	\$40,912.00
Preston Pipelines	\$42,000.00

(There are sufficient funds available in Capital Improvement Project 5053-7 Hetch Hetchy Right of Way Landscaping for this work.)

Recommendation: Award the bid and authorize the City Manager to execute a contract with San Jose Water Co. to provide and install approximately fifty feet of new waterline at the Sunny Hills turn out station at Washington Dr. and Escuela Parkway, for the not to exceed amount of \$27,289.00, subject to approval by the City Attorney.

*** 18. Approve Purchase and Installation of Diesel Exhaust Extraction Systems (Staff Contact: Chris Schroeder, 586-3161)**

Background: On March 21, 2006 the City approved a reimbursable FEMA-Assistance to Firefighters Grant. This is a matching grant that requires funding of \$21,731.03 from the City for the purchase and installation of Plymovent Diesel Exhaust Extraction Systems for Fire Stations No. 2, No. 3, and No. 4. Staff obtained quotes from Air Exchange, Inc. totaling \$108,657.03 for the three systems. Plymovent is a proprietary product; therefore this is considered a Sole Source purchase as sanctioned under Purchasing Municipal Code Section I-2-3.10 "Sole Source Procurement."

(Matching funds in the amount of \$21,731.03 are available from the Fire Department operating budget for this purchase.)

Recommendation:

1. Authorize the City Manager to execute a contract with Air Exchange, Inc. for the purchase and installation of Plymovent Diesel Exhaust Extraction Systems for Fire Stations No. 2, No. 3, and No. 4 for the not to exceed amount of \$108,657.03, subject to approval as to form by the City Attorney
2. Approve a budget transfer of \$86,926 from the grant revenues to complete purchase of the Plymovent Diesel Exhaust Extraction System as approved by Council on March 21, 2006.

*** 19. Authorize the City Manager to Execute a Consulting Services Agreement for Construction Material Testing Services with Consolidated Engineering Laboratories for Various Capital Improvement Program Projects (Staff Contact: Andrew Brozyna, 586-3135)**

Background: To meet the heavy Capital Improvement Program (CIP) construction workload, staff issued a Request for Proposal (RFP) for Construction Material Testing Services for various Capital Improvement Program (CIP) projects in accordance with the City's policy on consultant selection for City services. Several consultants responded and were interviewed for these services.

Staff recommends Consolidated Engineering Laboratories (CEL) for the construction Materials Testing Services. CEL is a recognized specialist in materials testing, with the qualifications and experience required for this type of service. Testing of construction materials such as paving asphalt, concrete and steel welding provides quality control and assurance that contractors meet the required specifications.

The Materials Testing Services would be provided on a time and material basis not to exceed \$200,000, which is considered reasonable for the estimated workload expected for the coming two years. The current respective project budgets and cost plans are sufficient to fund the services to be provided.

Recommendation: Authorize the City Manager to execute a consulting services agreement with Consolidated Engineering Laboratories in an amount not to exceed \$200,000, subject to approval as to form by the City Attorney.

*** 20. Authorize the City Manager to Approve Two Agreements with Santa Clara County Regarding Solid Waste Programs (Staff Contact: Darryl Wong, 586-3345)**

Background: The City of Milpitas has two County-wide solid waste program agreements with Santa Clara County that will terminate on June 30, 2006, unless new agreements are approved.

The first agreement, entitled the Agency Agreement for Countywide AB939 Implementation Fee, concerns the collection of landfill fees. The Integrated Waste Management Program for Santa Clara County has collected landfill-tipping fees from waste haulers on behalf of all jurisdictions within the County since July 1992. Revenue from the fees is used to fund county and local solid waste reduction activities. This agreement will be in effect until June 30, 2009.

The second agreement, entitled the Agency Agreement for Countywide Household Hazardous Waste Collection Program, concerns the collection of household hazardous waste. The Santa Clara County Department of Environmental Health has administered a Countywide Household Hazardous Waste Collection Program since October 1991. This proposed agreement will be in effect through 2009 and will continue to provide household hazardous waste collection at various locations where Milpitas residents may participate.

The County has recommended increasing the fee by \$0.37 from \$3.35 to \$3.72 per disposed ton to cover increased fiscal year 2007 program costs, and then returning to the \$3.35 fee for the fiscal years 2008 and 2009. This fee would be used to cover programs associated with both of the agreements listed above. Since this fee is paid by the landfill operator, there is no immediate, direct impact on the City's customer rates.

Recommendation: Authorize the City Manager to approve two agreements with Santa Clara County, subject to approval as to form by the City Attorney.

- * 21. **Authorize City Manager To Execute An Agreement With West Valley Sanitation District to Purchase 1 Million Gallons per Day Treatment Capacity, Approve Budget Appropriation - Capital Improvement Project No. 6104, and Authorize the Execution of the Third Amendment to the Wastewater Master Agreement with the Cities of San Jose and Santa Clara (Staff Contact: Darryl Wong 586-3345)**

Background: At the January 17, 2006 meeting, the Milpitas City Council directed staff to proceed with the purchase of 1 million gallons per day of wastewater treatment capacity at the San Jose/Santa Clara Water Pollution Control Plant (WPCP). Staff has since negotiated with West Valley Sanitation District (WVSD) for 1 mgd of their available excess capacity. A purchase agreement with WVSD at \$6,993,450 is now ready for Council approval. Payment will be placed in a holding account until final environmental review clearances are completed with interest payable to WVSD at the city's portfolio investment rate. An additional budget appropriation of \$150,000 is needed from the Treatment Plant Fee fund to cover all costs of the transfer.

In addition to the transfer agreement approval with WVSD, approval of an amendment to the Milpitas Master Agreement with the Cities of San Jose and Santa Clara, owners of the Wastewater Treatment Plant, is requested. The proposed Master Agreement Third Amendment establishes the agreed upon new capacity right allocation and capital cost share for Milpitas at the WPCP due to the transfer of 1 mgd capacity from WVSD to Milpitas.

Copies of the WVSD purchase agreement, budget appropriation form, and Master Agreement Third Amendment are included in the Council packet.

Environmental Review: This is to advise that this project will not have a significant effect on the environment. An EIR for the Midtown Specific Plan, certified on March 19, 2002 and an EIR for the San Jose/Santa Clara Water Pollution Control Plant, certified on July 1984, have been prepared pursuant to the provisions of the California Environmental Quality Act. The documents address the environmental impacts of the San Jose/Santa Clara Water Pollution Control Plant, including any transfers of wastewater treatment capacity between tributary agencies. No change in overall, system-wide wastewater treatment capacity or change to the design or construction of the San Jose/Santa Clara Water Pollution Control Plant is caused or necessitated by this transfer. A copy of the Midtown Specific Plan EIR and the San Jose/Santa Clara Water Pollution Control Plant EIR and the record of project approval may be examined at the Department of Planning and Neighborhood Services at 455 East Calaveras Boulevard, Milpitas.

Recommendations:

1. Authorize the City Manager to execute the 1 Million Gallon Per Day Capacity Purchase Agreement with West Valley Sanitation District, subject as to form by the City Attorney.
2. Approve budget appropriation in the amount of \$150,000 from Treatment Plant Fee fund.
3. Authorize the City Manager to execute the Third Amendment to the Master Wastewater Treatment Plant Agreement with the Cities of San Jose and Santa Clara, subject to approval as to form by the City Attorney.

XXII. CLAIMS AND DEMANDS (NONE)

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MAY 2, 2006, AT 7:00 P.M.**